

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 796

Post-Employment Restrictions for Certain NCUA Examiners

AGENCY: National Credit Union Administration (NCUA)

ACTION: Proposed rule.

SUMMARY: NCUA proposes to add a new part to NCUA's regulations to implement new, post-employment restrictions that will apply to certain senior NCUA examiners starting December 17, 2005. The proposed rule prohibits senior NCUA examiners, for a year after leaving NCUA employment, from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

DATES: Comments must be received on or before September 27, 2005.

ADDRESSES: You may submit comments by any of the following methods

(Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 796, Post-Employment Restrictions,” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

On December 17, 2004, Congress enacted the Intelligence Reform Act, Public Law 108-458, creating new, post-employment restrictions for certain federal employees who examine banks and credit unions. The law requires NCUA to prescribe its own regulation implementing this section for federal examiners of

federally insured credit unions and consult to the extent it deems necessary with the federal banking agencies. NCUA staff has consulted with their interagency group so that our proposed rule is consistent and comparable with the joint notice of proposed rulemaking the federal banking agencies are issuing.

Proposed Changes

The Board is proposing post-employment restrictions for certain NCUA examiners to implement recent amendments to the Federal Credit Union (FCU) Act. Pub. L. No. 108-458, §6303(c), 118 Stat. 3754 (2004); 12 U.S.C. 1786(w). The post-employment restrictions will apply to senior examiners starting December 17, 2005. For a year after leaving NCUA employment, senior examiners would be prohibited from accepting employment with a federally insured credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

The proposed rule implements the statutory provisions by giving NCUA the authority to issue administrative orders removing a person from a position with a federally insured credit union and barring further participation with that credit union or any federally insured credit union for up to five years. Also, the proposed rule implements the statute by imposing civil money penalties for violations of up to \$250,000.

The proposed rule clarifies the NCUA employees to whom the restriction will apply. 12 U.S.C. §1786(w)(3). Congress intended the one-year post-employment prohibition to apply to examiners with a “meaningful” relationship to the credit union.¹ Consistent with that intent, the proposal defines a “senior examiner” as an NCUA employee, commissioned as an examiner, who has continuing, broad, and lead responsibility for examining a particular federally insured credit union, routinely interacts with officers or employees of the credit union, and devotes a substantial portion of his or her time to supervising or examining that credit union.

The reference to a “substantial portion of time” in the definition of senior examiner is intended to address the situation in which an NCUA employee examines or inspects a group of federally insured credit unions. The Board believes such an examiner would be a senior examiner for purposes of the proposed rule only for those credit unions to which he or she devotes substantial time. The Board believes that an examiner who divides his or her time across a portfolio of federally insured credit unions is less likely to develop a meaningful relationship with any one credit union. The determination of whether an examiner devotes a substantial portion of his or her time is necessarily case by case.

While the one-year post-employment restriction can apply by its terms to all examiners, NCUA expects very few examiners to actually qualify as senior

¹ 150 CONG. REC. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

examiners. For example, NCUA expects most examiners in charge will not be subject to the one-year prohibition. Most NCUA examiners in charge examine multiple, federally insured credit unions in a single year and typically do not develop a sustained or meaningful relationship with any one credit union. Therefore, they would not be considered senior examiners under the proposal.

Although NCUA expects very few of its employees will be subject to the restriction, NCUA anticipates these few would involve specialty examiners, such as corporate examiners or problem case officers. These specialty examiners are sometimes assigned to be dedicated to and in residence at a credit union for an extended period of time. Thus, the proposed rule includes an example that an NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition.

The proposal defines the term consultant to include individuals who work directly on matters for, or on behalf of, a federally insured credit union. NCUA construes this to mean that a covered employee may not join a consulting group and accept an assignment directly for the credit union for which he or she served as senior examiner in two of the last 12 months of his or her NCUA employment. The employee, however, may join the consulting firm as long as he or she does not directly participate in a matter involving the relevant credit union. NCUA requests

comment on whether the meaning of consultant is sufficiently clear and whether there are other terms NCUA should define.

The proposed rule also implements the statutory provision authorizing the NCUA Board to grant waivers if the NCUA Chairman certifies that granting the waiver would not affect the integrity of NCUA's supervisory program. NCUA anticipates waivers would involve highly unusual circumstances. The Board invites comment on any provisions of the proposed rule.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposal prohibits senior examiners from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not

required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has determined that the proposed rule does not contain any information collections and, therefore, no PRA number is required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment
of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. NCUA requests comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 796

Conflicts of interest, Credit unions, Ethical conduct, Government employees.

By the National Credit Union Administration Board on July 21, 2005.

Mary F. Rupp

Secretary of the Board

Accordingly, NCUA proposes to add a new 12 CFR part 796 as follows:

Part 796 – Post-Employment Restrictions for Certain NCUA Examiners

Sec.

796.1 What is the purpose and scope of this part?

796.2 Who is considered a senior examiner of the NCUA?

796.3 What special post-employment restrictions apply to senior examiners?

796.4 When do these special restrictions become effective and may they be waived?

796.5 What are the penalties for violating these special post-employment restrictions?

796.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1786(w).

§ 796.1 What is the purpose and scope of this part?

This part identifies those National Credit Union Administration (NCUA) employees who are subject to the special, post-employment restrictions in section 1786(w) of the Act and implements those restrictions as they apply to NCUA employees.

§ 796.2 Who is considered a senior examiner of the NCUA?

For purposes of this part, an NCUA employee is considered to be the “senior examiner” for a federally insured credit union if the employee—

(a) Has been commissioned by NCUA to conduct examinations or inspections of federally insured credit unions on behalf of NCUA;

- (b) Has continuing, broad, and lead responsibility for examining or inspecting that federally insured credit union;
- (c) Routinely interacts with officers or employees of that federally insured credit union; and
- (d) Devotes a substantial portion of his or her time to supervising or examining that federally insured credit union.

§ 796.3 What special post-employment restrictions apply to senior examiners?

(a) Senior examiners of federally insured credit unions. An officer or employee of the NCUA who serves as the senior examiner of a federally insured credit union for two or more months during the last 12 months of individual's employment with NCUA may not, within one year after leaving NCUA employment, knowingly accept compensation as an employee, officer, director, or consultant from that credit union.

(b) Example. An NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition of this section.

§ 796.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions in section 1786(w) of the Act and §796.3 do not apply to any current or former NCUA employee, if—

(a) The individual ceased to be an NCUA employee on or before December 17, 2005; or

(b) The Chairman of the NCUA Board certifies in writing and on a case-by-case basis that granting the senior examiner a waiver of the restrictions would not affect the integrity of the NCUA's supervisory program.

§ 796.5 What are the penalties for violating these special post-employment restrictions?

(a) Penalties under section 1786(w)(5) of the Act. An NCUA senior examiner who violates the post-employment restrictions set forth in § 796.3 can be—

(1) Removed from participating in the affairs of the relevant credit union and prohibited from participating in the affairs of any federally insured credit union for a period of up to five years; and, alternatively, or in addition,

(2) Assessed a civil monetary penalty of not more than \$250,000.

(b) Other penalties. The penalties in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in §796.3 also may be subject to other administrative, civil, and criminal remedies and penalties as provided in law.

§ 796.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part, a person shall be deemed to act as a “consultant” for a federally insured credit union or other company only if the person works directly on matters for, or on behalf of, such credit union.